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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/850,343	05/07/2001	Christopher R. Vincent	POU920000191US1	2305

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EXAMINER

PHAN, TAM T

ART UNIT	PAPER NUMBER
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2144

DATE MAILED: 02/17/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

09/850,343

**Applicant(s)**

VINCENT, CHRISTOPHER R.

**Examiner**

Tam (Jenny) Phan

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**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 08 November 2004.  
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 1-20 is/are rejected.  
7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.  
10) ☒ The drawing(s) filed on 07 May 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 07/18/01, 10/07/02, 06/16/03.  
4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_  
5) ☐ Notice of Informal Patent Application (PTO-152)  
6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

1. This application has been examined. Amendment received on 11/08/2004 has been entered. Claims 1-20 are previously presented. Claims 21-40 are cancelled.
2. Claims 1-20 are presented for examination.

***Election/Restrictions***

3. Applicant's election without traverse of Group I (claims 1-20) in Paper Received 11/08/2004 is acknowledged.
4. Claims 21-40 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention. Election was made **without** traverse in Paper Received 11/08/2004.
5. Examiner is appreciative of the courtesy shown by Applicant in discussions of this restriction requirement.

***Priority***

6. No priority claims have been made.
7. The effective filing date for the subject matter defined in the pending claims in this application is 05/07/2001.

***Information Disclosure Statement***

8. An initialed and dated copy of Applicant's IDS form 1449, Paper Received on 07/18/2001, 10/07/2002, and 06/16/2003 is attached to the instant Office action.

***Double Patenting***

9. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or

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improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

10. Claims 1-20 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-31 of copending Application No. 09/850,390. Although the conflicting claims are not identical, they are not patentably distinct from each other because the differences between the two pending applications are minor wording, which do not change the scope of the invention. Refer to the below observation for obvious variations of limitation in claims 1-20 of the instant application and claims 1-31 of the pending application.

11. This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Applicant Instant 09/850,343	Pending Application 09/850,390
1. A method for discovering resources in a network of user nodes, said method comprising the steps of: receiving a resource request to be published at a first user node of the network; determining whether or not to send the resource request to a publish-subscribe server node; forwarding the resource request to a second user node of the network, when it is determined not to send the resource request to	1. A method for responding to a resource request from a requesting user node in a network of user nodes, said method comprising the steps of: receiving, via publication from a publish-subscribe server node, the resource request at a first user node of the network; receiving a response to the resource request at the first user node of the network; determining whether or not to send the response back to the

the publish-subscriber server node; and sending the resource request to the publish-subscribe server node for publication to a plurality of the user nodes of the network, when it is determined to send the resource request to the publish-subscribe server node.

2. The method as defined in claim 1, wherein in the determining step, the determination of whether or not to send the resource request to the publish-subscribe server node is a random decision made by the first user node.

3. The method as defined in claim 2, wherein in the determining step, the random decision is made based on a weighting factor corresponding to the probability that the first user node will decide to send the resource request to the publish-subscribe server node.

4. The method as defined in claim 1, wherein the forwarding step includes the sub-steps of: randomly selecting one of the user nodes to which the first user node is connected to be the second user node; and forwarding the resource request from the first user node to the second user node through a direct connection.

5. The method as defined in claim 1, further comprising the step of sending, via publication from the publish-subscribe service node, the resource request to at least some of the user nodes of the network.

6. The method as defined in claim 5, wherein in the step of sending via publication from the publish-subscribe server, the publish-subscribe server node sends the resource request to all of the user nodes of the network that are subscribed to one or more selected resource request channels.

requesting user node; forwarding the response to a second user node of the network, when it is determined not to send the response to the requesting user node; and sending the response back to the requesting user node, when it is determined to send the response to the requesting user node.

2. The method as defined in claim 1, wherein in the determining step, the determination of whether or not to send the response to the requesting user node is a random decision made by the first user node.

3. The method as defined in claim 2, wherein in the determining step, the random decision is made based on a weighting factor corresponding to the probability that the first user node will decide to send the response back to the requesting user node.

4. The method as defined in claim 1, wherein the forwarding step includes the sub-steps of: randomly selecting one of the user nodes to which the first user node is connected to be the second user node; and forwarding the response from the first user node to the second user node through a direct connection.

5. The method as defined in claim 1, further comprising the step of repeating the steps of determining and forwarding until in the determining step a user node that received the response decides to send the response back to the requesting user node.

6. The method as defined in claim 1, wherein the step of sending the response back to the requesting user node includes the sub-steps of: directly sending the response to a third user node of the network through a direct connection, the third user node having previously sent the resource request to the publish-subscribe server node for publication; and propagating the response from the third

7. The method as defined in claim 1, further comprising the step of repeating the steps of determining and forwarding until in the determining step a user node that received the resource request decides to send the resource request to the publish-subscribe server node.

8. The method as defined in claim 1, further comprising the steps of: sending the resource request to be published from a requesting user node, which desires the request resource, to the first user node; and sending an identical resource request from the requesting user node to all of the user nodes to which the requesting user node is connected through direct connections.

9. A machine-readable medium encoded with a program for discovering resources in a network of user nodes, said program containing instructions for performing the steps of: receiving a resource request to be published at a first user node of the network; determining whether or not to send the resource request to a publish-subscribe server node; forwarding the resource request to a second user node of the network, when it is determined not to send the resource request to the publish-subscribe server node; and sending the resource request to the server node for publication to a plurality of the user nodes of the network, when it is determined to send the resource request to the server node.

user node to the requesting user node.

7. The method as defined in claim 1, wherein the step of sending the response back to the requesting user node includes the sub-steps of: sending the response to a third user node of the network via the publish-subscribe server node, the third user node having previously sent the resource request to the publish-subscribe server node for publication; and propagating the response from the third user node to the requesting user node.

11. The method as defined in claim 9, wherein the step of forwarding the resource request includes the sub-steps of: randomly selecting one of the user nodes to which the third user node is connected to be the fourth user node; and forwarding the resource request from the third user node to the fourth user node through a direct connection, and the step of forwarding the response includes the sub-steps of: randomly selecting one of the user nodes to which the first user node is connected to be the second user node; and forwarding the response from the first user node to the second user node through a direct connection.

13. A machine-readable medium encoded with a program for responding to a resource request from a requesting user node in a network of user nodes, said program containing instructions for performing the steps of: receiving, via publication from the publish-subscribe server node, the resource request at a first user node of the network; receiving a response to the resource request at a first user node of the network; determining whether or not to send the response back to the requesting user node; forwarding the response to a second user node of the network, when it is determined not to send the response to the requesting user node; and sending the response back to the requesting user node, when it is

.	determined to send the response to the
.	requesting user node.
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.	.

***Claim Rejections - 35 USC § 103***

12. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

13. Claims 1-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bracho et al. (U.S. Patent Number 6,021,443), hereinafter referred to as Bracho, in view of Jacobs et al. (U.S. Patent Number 6,732,237), hereinafter referred to as Jacobs.

14. Regarding claim 1, Bracho disclosed a method for discovering resources in a network of user nodes (Title, Abstract, Figure 1), said method comprising the steps of: receiving a resource request to be published at a first user node of the network (column 4 lines 34-48, column 5 lines 27-51); determining whether or not to send the resource request to a publish-subscribe server node (column 15 lines 33-42); and sending the resource request to the publish-subscribe server node for publication to a plurality of the user nodes of the network, when it is determined to send the resource request to the publish-subscribe server node (Abstract, column 2 lines 19-25, column 15 lines 21-42, column 18 lines 1-11).

15. Bracho taught the invention substantially as claimed. However, Bracho did not expressly teach the step of forwarding the resource request to a second user node of the network, when it is determined not to send the resource request to the publish-subscriber server node.

16. Bracho suggested exploration of art and/or provided a reason to modify the method of Brach with additional steps such as forwarding the resource request to a second user node of the network, when it is determined not to send the resource request to the publish-subscriber server node (column 15 lines 21-42, column 18 lines 19-24).

17. Jacobs disclosed a method having the step of forwarding the resource request to a second user node of the network, when it is determined not to send the resource request to the publish-subscriber server node (column 9 lines 37-51).

18. It would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the method of Bracho with the teachings of Jacobs to include the step of forwarding the resource request to a second user node of the network, when it is determined not to send the resource request to the publish-subscriber server node in order to improve system performance (Jacobs, column 9 lines 37-52) since if the burden on the server is too great to service the resource request (column 9 lines 53-62), the resource request would still be able to forward to the appropriate node (column 18 lines 1-11).

19. Regarding claim 2, Jacobs disclosed a method wherein in the determining step, the determination of whether or not to send the resource request to the publish-subscribe server node is a random decision made by the first user node (column 7 lines 9-15, column 12 lines 39-57).

20. Regarding claim 3, Jacobs disclosed a method wherein in the determining step, the random decision is made based on a weighting factor corresponding to the probability that the



first user node will decide to send the resource request to the publish-subscribe server node (column 7 lines 9-15, column 12 lines 39-57).

21. Regarding claim 4, Jacobs disclosed a method wherein the forwarding step includes the sub-steps of: randomly selecting one of the user nodes to which the first user node is connected to be the second user node (column 7 lines 9-15, column 12 lines 39-57); and forwarding the resource request from the first user node to the second user node through a direct connection (column 9 lines 37-51).

22. Regarding claim 5, Bracho disclosed a method further comprising the step of sending, via publication from the publish-subscribe service node, the resource request to at least some of the user nodes of the network (column 4 lines 34-48, column 5 lines 27-51).

23. Regarding claim 6, Bracho disclosed a method wherein in the step of sending via publication from the publish-subscribe server, the publish-subscribe server node sends the resource request to all of the user nodes of the network that are subscribed to one or more selected resource request channels (Abstract, column 4 lines 34-48, column 6 lines 4-9, column 12 lines 20-39).

24. Regarding claim 7, Jacobs disclosed a method further comprising the step of repeating the steps of determining and forwarding until in the determining step a user node that received the resource request decides to send the resource request to the publish-subscribe server node (column 9 lines 23-51).

25. Regarding claim 8, Bracho disclosed a method further comprising the steps of: sending the resource request to be published from a requesting user node, which desires the request resource, to the first user node (column 4 lines 34-48, column 5 lines 27-51); and sending an

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identical resource request from the requesting user node to all of the user nodes to which the requesting user node is connected through direct connections (Abstract, column 4 lines 34-48, column 6 lines 4-9, column 12 lines 20-39).

26. Regarding claims 9-16, the machine-readable medium encoded with a program for discovering resources in a network of user nodes corresponds directly to the method of claims 1-8, and thus these claims are rejected using the same rationale.

27. Regarding claims 17-20, the user node for use in a computer network of the type that includes a plurality of user nodes and at least one publish-subscribe server node corresponds directly to the method of claim 1-4, and thus these claims are rejected using the same rationale.

28. Since all the limitations of the claimed invention were disclosed by the combination of Bracho and Jacobs, claims 1-20 are rejected.

### ***Conclusion***

29. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Refer to the enclosed PTO-892 for details.

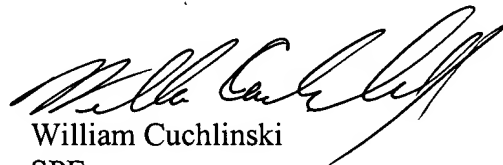
30. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tam (Jenny) Phan whose telephone number is (571) 272-3930. The examiner can normally be reached on M-F 9:00-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, William Cuchlinski can be reached on (571) 272-3925. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-3900.

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William Cuchlinski

SPE

Art Unit 2144

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tp  
February 14, 2005